

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
ASHDOWN, :
:
Plaintiff, : 13-CV-1374 (HB)
:
v. : September 26, 2013
:
EQUINOX, et al., : 500 Pearl Street
:
Defendants. : New York, New York
:
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY DISPUTES
BEFORE THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: This is Judge Gorenstein. Who's on the
2 line?

3 MR. HARMAN: Walker Harman for the plaintiff, Ms.
4 Ashdown, and I believe Mr. McPartland is on the phone for the
5 defendant.

6 MR. McPARTLAND: Good afternoon, Judge Gorenstein.

7 THE COURT: Can you state your appearance? We're
8 being recorded.

9 MR. McPARTLAND: Sure. Yes, this is Patrick
10 McPartland for the defendants.

11 THE COURT: All right. We're here based on
12 letters -- well, first an affidavit that's attached to a
13 letter dated September 18th, a responsive letter dated
14 September 20th and then another letter dated September 24th fro
15 the defendants.

16 So there's two issues. One is the complaint. The
17 other is the discovery extension issue. Let's deal with the
18 complaints first. One thing I couldn't tell for sure from the
19 affidavit is if there is an investigation does this go into
20 the file of the person who complains or the person who is
21 complained about or don't you know the answer to that
22 question?

23 MR. McPARTLAND: Judge, I believe the answer what
24 I've understood from Equinox's practice is it goes into the
25 person -- it goes into the file of the person complained

1 about.

2 THE COURT: So now, Mr. Harman, I read your letter
3 and I don't have a basis for question the veracity of this
4 witness. I would not object if you wanted to go through the
5 expense of your deposing that person because it is such an
6 unusual practice in my view but that is an expense to you.

7 Barring that, I think -- I'd be willing to think
8 about some compromise. I just don't know that searching what
9 is now claimed to be I guess literally hundreds of personnel
10 files is -- maybe even thousands is an appropriate burden.
11 Maybe there's some subset of people. Maybe there's people
12 you're interested in. Maybe there's managers you're
13 interested in. Can you think of some way to lessen the
14 burden?

15 MR. HARMAN: Well, I can't imagine how it could be
16 thousands when we're talking about 22 locations in the New
17 York City area.

18 THE COURT: Well, he said 140 for each one. So I
19 just multiplied 20 times 140. That's where I got that number
20 from.

21 MR. HARMAN: But I'm not talking about -- I would not
22 include maintenance staff or -- I would include people who
23 actually worked as personal trainers or in the management
24 staff.

25 THE COURT: Do you have any information as to how

1 many people we're talking about?

2 MR. HARMAN: Do I?

3 THE COURT: Yes. Do you know how many managers are
4 in a location? I'll ask the other side if you want but I
5 thought you might have some idea.

6 MR. HARMAN: Well, I think that the size of locations
7 vary. So I couldn't tell you exactly how many personal
8 trainers there are at each location. I will say though that
9 with respect to burden this issue was raised a long time ago
10 and so I don't even know why I need to -- I would need to
11 depose someone. All we seek is the complaints and had they
12 endeavored to search the files months ago when they were first
13 requested or at least in August when we sufficiently and
14 clearly narrowed it on the record we wouldn't be here today.

15 So I'm a little confused as to why now somehow the
16 burden is on us to explain exactly why -- how they should
17 comply. I think we've been repeatedly clear over and over and
18 over again about what we want and I can't guess about how many
19 complaints there are, how many employees have made complaints
20 or how many employees there are at each location. It's
21 something that the defendant should have undertook to marshal
22 quite some time ago.

23 THE COURT: Well, I'm confused why you're confused.
24 They threw up the burden objection and they did it by saying
25 it's not in any centralized place, that we're talking about

1 140 employees per location and they basically said it's
2 burdensome for us to go through that many employees for all
3 the locations. So --

4 MR. HARMAN: That's not -- that's not really true.

5 THE COURT: Mr. Harman, Mr. Harman stop. Let me
6 finish when I'm talking. So I turned to you because I have no
7 information about this to see if you had some proposal as to
8 what you might want to require them to do that would be a
9 lesser burden. Now, you may not have the information to make
10 a proposal and I'm happy to question the defendant but I
11 thought I would give you the opportunity initially to make a
12 proposal but if you don't want to I'll ask the defendant if
13 they have a proposal. Go ahead, Mr. Harman.

14 MR. HARMAN: But that is not what they've said. What
15 they've said is they've given a variety of different types of
16 last minute excuses. They've said there's a hotline. They've
17 said that sometimes complaints are made to corporate
18 headquarters. Why can't those be produced. Then they've also
19 said that there could be complaints at individual locations.
20 They've offered three different alternative theories as to why
21 it's all of a sudden now at the end of the day too burdensome
22 for them to look for any types of information whatsoever.
23 Therefore they're not supposed to -- they don't need to do
24 anything. What we --

25 THE COURT: Mr. Harman, I don't think we're

1 understanding each other. Let's stop. I will now turn to
2 them to see what their -- I was giving you a chance to do it
3 first. If you don't wish to that's fine. You said you don't
4 wish to. I will now turn to them to see if they have a
5 proposal.

6 So turning you, Mr. McPartland, I don't know that
7 it's reasonable for you to say there's things all over the
8 place, we're giving you nothing. So if you have a proposal as
9 to what you think would be reasonable I'm willing to hear from
10 you.

11 MR. MCPARTLAND: Yes, I do, Judge. There are -- I
12 mean they're actually named in defendant's -- as defendants in
13 this action. There were a handful of -- there's the few
14 decision makers here. Anybody who had any nexus to this case,
15 and I can actually name those names, I will produce -- I can
16 look at their files and I can produce any complaints in their
17 files. That's not burdensome. That's actually fair and
18 relevant and I think that that's the scope that should be
19 proffered here.

20 THE COURT: I'm not sure I understand what the --
21 hold on. Hold on. Stop, stop. Folks, if I'm talking you've
22 to stop.

23 I don't know who you're referring to. So is it some
24 list of names? Is it some category that's easily
25 recognizable? What are you talking about?

1 MR. McPARTLAND: It is a list of names, Judge. So in
2 this case there was Lawrence Sanders who's the general manager
3 on the Soho Club who was directly involved in the decision to
4 terminate Ms. Ashdown's employment. We could produce anything
5 from his personnel file. There is Matthew Plotkin who is an
6 area manager who oversees the -- he oversees the Soho Club as
7 well as other clubs. Any complaints in Mr. Plotkin's
8 personnel file we can produce. There is Elizabeth Minten who
9 is a regional director of personal training at the corporate
10 level who was consulted with respect to the termination of Ms.
11 Ashdown. We can produce anything in her files. There is
12 David Harris who was also consulted. He's the national
13 director of personal training. We can produce anything in his
14 file. There is also Joseph Mattarazo who is the -- I don't
15 have -- he's the regional personal training director at the
16 corporate level. We could produce anything in his file.

17 These are all that -- these are the handful -- and
18 Maura Mietta actually. We could produce anything in his file.
19 He's the alleged -- he's one of the alleged harassers. So any
20 one of these fact witnesses to this case we could go to their
21 files, look at their files and produce whatever is in their
22 files.

23 THE COURT: Mr. McPartland, this isn't quite getting
24 at the issue. Let me explain to you why. The discrimination
25 here as I understand it did not happen at the corporate level.

1 It happened at a facility, is that right, or whatever the
2 words --

3 MR. McPARTLAND: The allegation is there are -- there
4 are two allegations basically, Judge. The one allegation is
5 that Ms. Ashdown was terminated because she had recently
6 undergone cancer treatment. So that that's the disability --

7 THE COURT: And she worked where though?

8 MR. McPARTLAND: She worked at the Soho Club. She
9 was a personal trainer.

10 THE COURT: She worked at a fitness club, right.

11 MR. McPARTLAND: Yes, correct.

12 THE COURT: So my point -- so let me just finish my
13 thought.

14 MR. McPARTLAND: Sure.

15 THE COURT: The issue here is whether people in the
16 chain of command up through and including the corporate level
17 engaged in discrimination. But it's not so much that there
18 would be a complaint in their file that they personally
19 discriminated against someone but what we're trying to get at
20 is did something come to these folks' attention about
21 discrimination at a lower level through fitness clubs, that
22 they then had a decision making role in. Do you understand
23 what I'm getting at?

24 MR. McPARTLAND: Yes.

25 THE COURT: So to finish the thought, if you folks

1 had a list of discrimination complaints we wouldn't be talking
2 here. We would just look -- have those complaints and that
3 would be the end of it. So we're now trying to figure out a
4 way to get at it. The way to get at it is not to look at the
5 person at the top of the pyramid and say are there any
6 discrimination complaints against them. The way to get at it
7 is to look at discrimination complaints at lower levels that
8 could have gone to him at some point, figure out what those
9 complaints are and then figure out how they were handled and
10 we're not going to get that by looking at the person or people
11 at the top. Do you see the problem?

12 MR. McPARTLAND: Yes, I do see the problem, Judge,
13 and the flip side to that problem is the burden issue which we
14 outlined.

15 THE COURT: Right. Which is why I'm trying to figure
16 out is there some way short of reviewing -- I don't know if
17 it's hundreds or thousands, whatever it is, employee's
18 personnel files. Is there a way to cull it so that we can get
19 to the people who are actually in a position to do
20 discrimination? For example, people who have employees under
21 them. That may be a much, much smaller number.

22 MR. McPARTLAND: Judge, I'm willing to -- I'm
23 obviously willing to do whatever is reasonable but I'm not
24 sure that I'm following you.

25 THE COURT: Well, the people who do -- let me ask

1 this. This is a case where a person was I assume
2 discriminated against by a supervisor. Is that what was going
3 on?

4 MR. McPARTLAND: The allegation is against the
5 general manager of -- that's correct.

6 THE COURT: For example, if each of -- if we have,
7 how many fitness clubs, 14, 20?

8 MR. McPARTLAND: We have 21.

9 THE COURT: It seems to me like an easy start would
10 be to look at the discrimination complaints against the
11 general managers in those clubs. That wouldn't be burdensome
12 at all. Then we -- hold on. I'm not saying that's the end of
13 it but I'm just trying to figure out a way to do this that
14 gets at what the plaintiff needs.

15 So if we look through those personnel files then
16 some of them might have some discrimination claims and those
17 might reasonably infer went up the chain and either were acted
18 on favorably or unfavorably to the complainant.

19 Now, I don't know if there's some other category --
20 I think what we're really looking at are people who supervised
21 other people and to see if there were complaints against them
22 because there's a whole premise of this is that if there's a
23 complaint it's going to be in that person's personnel file.
24 So assuming that premise to be true this seems like a way to
25 caption complaints by supervisors is to look at the personnel

1 files of these supervisors. Other than that, if we look at a
2 fitness club, who are the supervising people? Is it just the
3 general manager or is there other people?

4 MR. McPARTLAND: In this case, Judge, since Ms.
5 Ashdown was a manager she would have reported to the general
6 manager as would --

7 THE COURT: But I don't want to just think about Ms.
8 Ashdown. I want to think about the concept more generally.
9 So as --

10 MR. McPARTLAND: As with the other -- I'm sorry, go
11 ahead, Judge.

12 THE COURT: If you can answer the question. Do you
13 know within a fitness club are we talking about one
14 supervisor, ten, 20, what are we talking about, or don't you
15 know?

16 MR. McPARTLAND: You're talking about a general
17 manager. You're talking about --

18 THE COURT: I'm asking within a fitness club -- I
19 assume there are a lot of people who don't supervise anyone.
20 The cleaner uppers, personal trainers, whatever. They don't
21 supervise anybody.

22 MR. McPARTLAND: Correct.

23 THE COURT: I want to know who has a supervisory role
24 within a fitness club, who has people under them. Is it one
25 person, five people, ten people or don't you know?

1 MR. McPARTLAND: It's several people and I can rattle
2 them off for you. It does depend a little bit on the size of
3 the club but I could actually rattle off the positions for you
4 if that will help but it is -- we're talking probably
5 definitely five to ten I would say per club at a managerial
6 level

7 THE COURT: It could be one, it could be ten, you
8 don't know?

9 MR. McPARTLAND: No, no, that it could be one or it
10 could be ten. I'm saying it's going to be a minimum -- there
11 are certain departments at each club that have a manager and
12 then there are certain managers at each club which I could
13 rattle off --

14 THE COURT: It will help. The more information I
15 have the better. Go ahead.

16 MR. McPARTLAND: Sure. At every club there's a
17 general manager who oversees a number of other managers.
18 There are assistant general managers. I believe there is one
19 or two assistant general managers. They oversee operations.
20 There is a personal training manager which was the position
21 that Ms. Ashdown held. They oversee the personal trainers.
22 There was a fitness manager which also oversees the personal
23 trainers. There is a maintenance manager. There is typically
24 a Palates manager. There's typically a fitness manager.
25 There's typically a membership like sales role type of

1 manager. I'm trying to figure out if that's the whole
2 universe. That's what you're going to have at pretty much
3 every club that those departments cover.

4 THE COURT: So --

5 MR. McPARTLAND: There's a front desk manager as
6 well. I'm sorry. I'm trying to -- I'm doing this off the top
7 of my head but each department -- there's a spa manager as
8 well. So each department -- there are several departments at
9 the club. Each department has one to two managers each and
10 then overseeing each of those departments you'll have a
11 general manager and you'll also have assistant general
12 managers, one or two assistant general managers.

13 So that's what I was trying to say. It's going to
14 be at least probably seven per club. It could be -- depending
15 on the size of the club it could potentially be over ten.

16 The other thing I would point out too is there's
17 this obviously turnover at the club. So what exists right now
18 you start adding numbers to that over the last five years
19 because people have come and gone.

20 THE COURT: When was the termination in this case?
21 What year?

22 MR. McPARTLAND: The termination in this case was
23 September 2011.

24 THE COURT: Okay. So we now have a little more
25 information. I'm now thinking about how to do this. Mr.

1 Harman, is there anything you want to propose?

2 MR. HARMAN: Well, I just wanted to remind the Court
3 that there has been testimony both regarding an anonymous
4 hotline which I presume is dealt with by a third party
5 administrator. I don't see why that information couldn't be
6 turned over or we couldn't subpoena that information.

7 Also, Mr. Sanders, the GM of the Soho location
8 testified that he himself had been the object of a complaint
9 of inappropriate workplace conduct and described the procedure
10 which involved corporate HR and involved being coaxed and
11 having to sign a written warning of some sort. So the
12 individual to whom we claim discriminated against my client
13 described a corporate procedure for processing a complaint.

14 So it seems to me that at a bare minimum I don't
15 understand why Equinox can't turn over at least the
16 information that it has that it has retained pursuant to the
17 policy that Mr. Sanders testified to himself as part of this
18 proceeding.

19 MR. McPARTLAND: Judge, I don't know whether Mr.
20 Harman read Mr. Herbert's email but --

21 THE COURT: I'm confused now. I thought that the
22 claim by the company was that they literally didn't keep
23 records there, they put anything they had in personnel files.
24 That was the only location of the records.

25 MR. McPARTLAND: And that's correct. That's what mr.

1 Herbert's affidavit says.

2 THE COURT: So that answers the second part. The
3 hotline we can talk about. Let's talk about the hotline.
4 Does the hotline have or do we have any information about
5 whether the hotline might keep records by company of
6 complaints?

7 MR. McPARTLAND: No, I don't know that, Judge, but I
8 mean it's certainly an inquiry. It is a third party vendor.
9 It's a company called Global Compliance. I could certainly --

10 THE COURT: I think you should make inquiry of them
11 because I think they're in your control for purposes --

12 MR. McPARTLAND: No, no, I'm not saying I wouldn't do
13 it, Judge. There needs to be a subpoena. I'm happy to do it
14 if the Court so directs. I don't know the answer to your
15 question though.

16 THE COURT: But my point is I think it's in your
17 control and for that reason actually I think it should have
18 been a long time ago. So you should immediately reach out to
19 the hotline company to see if they have records of complaints
20 by company. I'd be amazed if they don't. And if they have
21 them to turn them over, get them arranged to be turned over
22 quickly.

23 So, Mr. Harman, you brought up these other topics
24 and I was talking about something else. Did you want to
25 address the thing I was talking about or not?

1 MR. HARMAN: As far as manager's files, this is just
2 such an unusual sort of factual scenario. It's hard for me to
3 imagine that it would capture what we're entitled to and what
4 we're seeking which is have any other employees under these
5 corporate supervision in the last five years complained about
6 gender and/or disability discrimination if we just look in the
7 GM's files or assistant GM's or even the list that Mr.
8 McPartland provided. I really -- I don't -- I would not agree
9 that that would be -- that that would sufficiently address
10 these issues that we've been raising for some time. I don't
11 know what other suggestion to make at this point.

12 THE COURT: Well, tell me why you don't think it
13 would sufficiently address it. I'm not saying I'm going to
14 order it but if I did why would it be --

15 MR. HARMAN: Because if the complaint is more -- if
16 the complaint is more generalized, if the complaint is I don't
17 think that Equinox has -- I think they have discriminated
18 against me based on my disability but doesn't necessarily name
19 a particular person why would that complaint be in any
20 particular person's file. So it also -- it really boggles my
21 mind as to why -- I'm not even I guess clear myself. Is it
22 Equinox's position that if an employee makes a complaint that
23 a copy of that complaint goes into the employee's file and if
24 it is -- if it names a particular individual as an actor it
25 also goes in that individual's file as well? Is that a clear

1 understanding of Equinox's position on that issue?

2 THE COURT: That was the purpose of all this. So,
3 Mr. McPartland, we need to know if that's correct or not.

4 MR. McPARTLAND: My understanding is that it goes
5 into the alleged actor's file. So, for instance, with Mr.
6 Sanders the general manager, a corrective action notice would
7 have been placed into his file.

8 THE COURT: A corrective action notice but if there
9 was a complaint of discrimination let's say that led nowhere
10 would that also be in his file or not?

11 MR. McPARTLAND: If it was made against him it's my
12 understanding it would be in his file.

13 THE COURT: Okay.

14 MR. HARMAN: I honestly think, Judge, that I couldn't
15 really effectively do my job frankly without exploring this
16 with someone who has actual knowledge because with all due
17 respect to Mr. McPartland I just -- it seems like we've sort
18 of been dealing with a lot of ambiguity here and I just don't
19 fully understand. I guess in essence we already have to deal
20 with whether the discovery period is going to be extended for
21 Mr. Plotkin's deposition which unfortunately I had to cancel
22 at the last minute because I became very, very ill one
23 morning. That was the only remaining deposition but I don't
24 have a better idea at this point except to explore the issues
25 of how and in what ways complaints of discrimination are

1 maintained with the individual who offered the affidavit I
2 guess more thoroughly in a short deposition.

3 I don't have a better idea. Otherwise I just think
4 that this could go on and on and on and I don't think that
5 that's good for this case or an efficient use of the Court's
6 time to continue to write letters and have phone conferences
7 every two weeks especially when we have some deadlines with
8 Judge Baer to deal with.

9 THE COURT: This is the very thing I asked you at the
10 beginning and you told me you were not interested so I guess
11 you're interested now. That's fine.

12 MR. HARMAN: Well, I don't have a better idea --

13 THE COURT: Mr. McPartland, what's your thought?

14 MR. McPARTLAND: My thought is I believe we've -- we
15 had previously made Mr. Herbert available for a deposition.
16 Depositions got pushed back to the last minute here because of
17 plaintiff's counsel and we made everybody available back in
18 August. We went right at literally the date of the discovery
19 deadline. My client -- my witness was at Mr. Harman's office
20 on that Friday ready for his deposition and I received a phone
21 call from his office that the deposition is not going forward.
22 So I mean my only concern with -- my only concern with
23 extending the -- I'll produce whatever the Court instructs me
24 to produce obviously but my only concern is I have to make a
25 summary judgment motion in this case and I'm already eating

1 into my time. I have until October 26th to make that motion.

2 THE COURT: The person who's missing is your witness?
3 The person who hasn't been deposed.

4 MR. McPARTLAND: Yes, that's correct.

5 THE COURT: Why -- you have total access to him. So
6 anything you need from him for summary judgment motion you can
7 do as an affidavit; right?

8 MR. McPARTLAND: Yes, I could.

9 THE COURT: Really those are kind of Judge Baer's
10 deadlines. So I think those need to be complied with unless
11 you get an extension from him. I don't view this discovery as
12 affecting our ability -- Mr. Harman, were you planning to move
13 for summary judgment?

14 MR. HARMAN: No.

15 THE COURT: So I don't view this as affecting your
16 ability to move for summary judgment, Mr. McPartland. So you
17 should just go full speed ahead and make your summary judgment
18 motion. It may have some effect on the plaintiff's response
19 but that at least buys us a few weeks depending upon what
20 schedule you two are planning. It was supposed to be fully
21 briefed by November 15th. So if it's filed -- I don't know --
22 in the next couple of weeks then presumably the plaintiff's
23 response won't be until the end of October. So that gives us
24 a little bit of time to work with to make whatever --

25 MR. McPARTLAND: Judge, I unfortunately will not be

1 able to -- I'm going on trial in Kings [inaudible] I'm picking
2 a jury on October 10th.

3 THE COURT: I don't quite know how Judge Baer expects
4 this to happen. I think -- the only thing I can think of is
5 that if you don't agree on a schedule you have to follow the
6 local rules which would allow essentially four weeks for the
7 briefing. So under Judge Baer's rule you'd basically have to
8 file by October 14th.

9 MR. McPARTLAND: I --

10 THE COURT: Do you see what I'm saying?

11 MR. McPARTLAND: I believe the rule is -- I believe
12 the rule would be -- it's November 15th. I think it's -- I
13 serve and then it's two weeks for opposition and then I have
14 one week for a reply.

15 THE COURT: So that would mean your brief is due
16 when?

17 MR. McPARTLAND: October 25th.

18 THE COURT: You're right. So you have until October
19 25th which means the plaintiff has until November 8th which
20 means there's no problem in my mind on some of this just
21 dribbling over slightly because it's not your problem. It's
22 going to be the plaintiff's problem and I'm quite confident
23 we'll have it resolved by November 8th. So I think that solves
24 the discovery problem. I don't mind discovery happening after
25 the deadline as long as it doesn't interfere with Judge Baer's

1 schedule. Do you see what I'm saying?

2 In terms of scheduling the other deposition you
3 should -- the plan was to schedule it I assume within the next
4 week or two. I'm talking about the deposition of the person
5 who's mentioned ion the letters. I forget his name. Mr.
6 Plotkin. You're planning to do that in the next week or so;
7 right? Hello?

8 MR. McPARTLAND: Yes.

9 THE COURT: Anybody.

10 MR. McPARTLAND: I haven't spoken to plaintiff about
11 his schedule. I mean I'm not available until October 2nd
12 because of depositions that I have over the next few days.

13 THE COURT: But you're going to do it before this
14 trial obviously which is the 14th; right? I mean I'm telling
15 you to do it. You need to do it between the 2nd and the 11th.

16 MR. McPARTLAND: Yes. My client is going to be ready
17 -- my client will be ready next week. I'm just --

18 THE COURT: So that will -- that's going to happen in
19 plenty of time for both of you to use his deposition if you
20 wanted to do that.

21 Now we have the issue -- now back to my discovery,
22 the larger discovery problem. My inclination is to -- by the
23 way, the personnel files of people who were in place September
24 2011 beforehand are located at the clubs or in some central
25 place or what?

1 MR. McPARTLAND: They're electronically -- they're in
2 electronic format.

3 THE COURT: Oh, interesting. Well, how hard is it to
4 search files in electronic format for complaints of
5 discrimination? Have you looked into that?

6 MR. McPARTLAND: [Inaudible] they cannot be searched
7 by keyword. Yes, we did. That's in Mr. Herbert's affidavit.

8 THE COURT: They have to be searched by someone
9 examining them.

10 MR. McPARTLAND: Yes.

11 THE COURT: Still I don't view it as very burdensome
12 to do sort of the kind of numbers we're talking about which is
13 those managers times 20 clubs. I guess it adds up to about
14 200 but that seems like about the right number that I might
15 expect you to do given -- with the balancing of the burden and
16 the benefit. Again, all this could be avoided if a record
17 were kept the way most corporations keep them.

18 So here's the way I'm going to leave it. I'm going
19 to direct that anyone with a title, general manager, assistant
20 manager or manager have their files searched for complaints of
21 gender, disability discrimination for people who are present -
22 - -- who are working from September 2011 -- I'm going to say
23 the three years prior. So that might in some cases mean more
24 than maybe nine or ten people I just mentioned or what you
25 just mentioned but you'll have to live with that. So that's

1 the ruling.

2 If, Mr. Harman, you want to make a pitch for
3 something further based upon deposition testimony you
4 obtained, you're welcome to try to get that deposition. You
5 need to do that in the next -- in that same time period before
6 the 11th if you want to go forward with that. Then if you
7 think based on that you want to seek something else.

8 I'm also ordering that the defendant contact this
9 company that takes the telephonic complaints to obtain from
10 them a list which I'm sure they would have by a company of
11 gender, disability complaints. Now, if they don't have it
12 that needs to be explained by someone in an affidavit.

13 Any questions on the ruling, Mr. McPartland?

14 MR. McPARTLAND: No, Judge. I just do have a
15 question with respect to Judge Baer's schedule.

16 THE COURT: Yes.

17 MR. McPARTLAND: With respect to moving back to
18 summary judgment motion, that's an issue we can raise --

19 THE COURT: If you want something later than that
20 just write to Judge Baer and do whatever he -- whatever he
21 requires under his rules.

22 MR. McPARTLAND: Okay. Thank you.

23 THE COURT: Any questions, Mr. Harman, about the
24 ruling?

25 MR. HARMAN: No. Thank you very much, Judge.

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THE COURT: Thank you everyone.

THE COURT: Bye.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Shari Riemer

7 Dated: October 8, 2013
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